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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of U S WEST Communications, Inc. for	)	CC Docket No. 98-157
Forbearance from Regulation as a Dominant	)	
Carrier in the Phoenix, Arizona MSA	)	

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S. USTA's member companies support the removal of regulations which prevent or impede the ability of incumbent LECs to respond to competition.

On August 24, 1998, U S WEST filed a petition pursuant to Section 10 of the Telecommunications Act of 1996 requesting that the Commission forbear from regulating U S WEST as a dominant carrier in the provision of high capacity services in the Phoenix, Arizona Metropolitan Statistical Area (MSA). U S WEST's petition provides compelling evidence that the market for high capacity services in the Phoenix MSA is competitive. US WEST describes the intense competition it faces from resellers and facilities-based telecommunications providers.

U S WEST's petition also makes clear that the criteria of Section 10 are satisfied. Based on the evidence provided, dominant carrier regulation is not required to ensure that rates are just, reasonable and not unreasonably discriminatory and is not necessary to protect consumers. Forbearance is consistent with the public interest.

USTA has demonstrated that there is no basis for continuing price regulation for high capacity services and has consistently urged the Commission to grant incumbent LECs regulatory relief to permit them to respond to competition.[1] Asymmetric regulatory constraints should be removed at the same time a market is open to competition in order to maintain economic efficiency:

> The first changes in regulation are intended to eliminate unnecessary constraints which do not reward efficiency and prevent the least-cost supplier from providing the service. This change should occur when the market is *first* opened to competitors so that entrants and incumbents will make efficient entry and exit decisions...At this stage regulation should be immediately adjusted so that it provides neither the entrant nor the incumbent any net advantage on a forward-looking basis. In order for competitors to be given accurate and efficient price signals, they must compete with firms on as a symmetric basis as possible.[2]

In CC Docket No. 96-262, USTA recommended that the Commission forbear from regulating high capacity access services. USTA provided evidence that competition for these services had been at robust levels long before the Telecommunications Act of 1996 was enacted. The Commission itself concluded that the availability of close substitutes for services foster market forces that will generally ensure that the rates, practices and classifications of carriers are just, reasonable and not unreasonably discriminatory.[3] As the record in CC Docket No. 96-262 and subsequent filings by incumbent LECs reveal, there have been direct substitutes for high capacity special access services in every urban market for years. The Commission's statistics on

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[1]USTA Comments, CC Docket No. 96-262, filed January 29, 1997.

[2]USTA Comments, CC Docket No. 96-262, Schmalensee and Taylor Statement, Attachment 1, January 29, 1997 at 25.

[3]Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Report and Order*, CC Docket No. 96-61 (rel. Oct. 31, 1996) at ¶ 14.

fiber deployment evidence the ever growing alternative capacity available to serve urban markets. In 1995, the Commission noted that this alternative capacity disciplines incumbent LEC pricing, "[Competitive Access Providers] CAPs appear to have motivated local exchange carriers to price special access closer to cost."[4] The existence of substantial CAP capacity combined with the strong revenue growth of these competitors indicate that market conditions were conducive to competition prior to the 1996 Act. "Providing flexibility after losses of this magnitude inevitably leads to significant welfare losses because of the inability to respond to competitors to retain customers. These markets are clear examples of where the Commission is already too late. Flexibility to respond to competitive offerings should have been given before the losses occurred, not after."[5]

Of course, the passage of the 1996 Act provided additional tools for competitors and the percentage of the high capacity market captured by competitors has continued to increase.[6] As a result, Commission action to provide relief from unnecessary regulatory constraints is even more critical.

> Market forces are sufficiently developed in the special access and dedicated transport markets to constrain ILEC pricing to determine optimal levels of output, investment and price. There is no need for regulation in these markets because these are high volume services for which entrants have been aggressively competing, are offering innovated pricing plans to customers and

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[4]Jonathan M. Kraushaar, Industry Analysis Division, Common Carrier Bureau, *Fiber Deployment Update End of Year 1995*, at 34.

[5]Richard Schmalensee and William Taylor, "The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments: A Primer", at 21. [Schmalensee and Taylor].

[6]*Id.*

> are not constrained when introducing new services by unneeded regulatory requirements such as tariffs or public interest tests. These competitors are large and powerful organizations, such as WorldCom/MFS, ACSI and Brooks Fiber that have the flexibility to tailor services to customer-specific demands. In addition, special access and dedicated transport customers are large organizations such as AT&T, MCI and Sprint that have the resources and economies to self-supply special access and dedicated transport efficiently if they are unable to obtain cost-based prices for these services.[7]

In CC Docket No. 96-262 the Commission correctly concluded that market forces should be relied upon to determine interstate access prices; however, it has not adopted a framework to implement the market-based approach. In the absence of such a framework, the Commission must avoid further delay and address incumbent LEC requests for regulatory relief on an expedited basis. When a clear demonstration is made, relief must be granted. The time is long-overdue when incumbent LECs have the same opportunities as their competitors to compete in the marketplace.

Based on the forgoing, USTA urges the Commission to grant the U S WEST petition now.

Respectfully submitted,

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[7] *Id.* at 24.